IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 437 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VASUD RANADE

Versus

MINESH PURSHOTTAM PATEL

Appearance:

1. Civil Revision Application No. 437 of 1984

MR NK MAJMUDAR for Petitioner No. 1-1/3

MR DR BHATT for Respondent No. 1

..... for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/09/2002

ORAL JUDGEMENT

This Revision Application under Section 29(2) of

the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') has been preferred by the defendants - tenants against the judgment and order dated 30th December, 1983 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No.27/1980. The respondent no.1 herein (hereinafter referred to as 'the plaintiff') then a minor instituted Rent Suit No.631/1977 (old Regular Civil Suit No.1572/1972) for recovery of possession of the suit shop through his next friend in the Court of Small Causes, Vadodara. The learned trial Judge, under his judgment and order dated 30th October, 1979, was pleased to allow the suit and passed decree for possession and of mesne profits at the rate of Rs.15=00 per month. Feeling aggrieved, the defendants (the present petitioners) preferred Regular Civil Appeal No.27/1980 in the Court of District Judge, Vadodara. The said appeal was dismissed under the impugned judgment and order dated 30th December, 1983 by the learned Assistant Judge, Vadodara. Feeling aggrieved, the defendants have preferred the present Revision Application.

The suit premises is a shop in 'Hathiwala' building situated at Vadodara. The plaintiff is the owner of the suit shop. The suit shop was given to one Laxman Ranade on rent of Rs.15=00 per month. The said Laxman Ranade ran his proprietary business of repairing watches from the suit shop in the name and style of 'National Watch Repairing Firm'. The said Laxman Ranade died on 25th August, 1972. On the death of the said Laxman Ranade the defendants (the widow, the son and the daughter of the said Laxman Ranade) claimed right to tenancy under Section 5(11)(c)(ii) of the Rent Act. The plaintiff alleged that the watch repairing business was of the sole proprietorship of the deceased Laxman Ranade. Neither of his family members i.e. the defendants carried on the said business with the said Laxman Ranade. The defendants, therefore, can not be said to be the statutory tenants as envisaged under Section 5(11)(c)(ii) of the Rent Act and prayed for recovery of possession of the suit shop.

The suit was contested by the defendants. The learned trial Judge held that neither of the defendants was carrying on business with the deceased Laxman Ranade. The said finding has been confirmed by the Court below. It has been found by both the Courts below that the deceased Laxman Ranade alone was carrying on business from the suit shop. His wife, the defendant no.1 had never carried on business alongwith the late Laxman Ranade. His son, the defendant no.2 was a qualified

engineer and had been serving at Bombay from the year 1966 to 1978. Earlier he was serving at Baroda from the year 1961 to 1966. Thus, the Court has found that not only the defendant no.2 was not carrying on business with the deceased Laxman Ranade but there was no such intention either. The daughter of the deceased Laxman Ranade, the defendant no.3 has been found to have been married and residing at Pune. Both the Courts below have given cogent reasons in support of the findings arrived at.

The defendants also challenged the maintainability of the suit before the Rent Court. It was submitted that in the event the defendants were not found to be the tenants the Rent Court shall have no jurisdiction to entertain the suit for recovery of possession. The judgment of this Court in the matter of NAFISABEN BADRUDIN TOFAFAROSH V/S. JOHN ALIAS ZENUB ABDULKADAR BABUJI & ORS. [22 G.L.R. 674] is a complete answer to this contention. This Court has held that the question whether the defendants have become tenants by virtue of Section 5(11)(c) of the Rent Act also is required to be resolved by the Rent Court. Hence, both the Courts below have rightly held that the suit before the Court of Small Causes was maintainable.

In view of the above concurrent finding recorded by both the Courts below, the decree for possession does not warrant interference. The Civil Revision Application is dismissed with costs. Rule is discharged. Interim stay stands vacated.

(Ms. R.M. Doshit, J.)

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